IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5124 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BLUE STAR LIMITED AND OTHERS
Versus
V B PATEL AND ANOTHER

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Appearance :
MR KM PATEL for Applicants.
MR AY KOGJE, APP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 05/04/2006

ORAL JUDGMENT

By filing this application under Section 482 of the Criminal Procedure Code, it is prayed by the applicants that process issued below Criminal Case No.11681/1996 may be quashed.

Aforesaid complaint is filed by Government Labour Officer, Mr.V.B.Patel. Said complaint is filed by the complainant in his capacity as Inspector appointed under Section 18 (2) of Contract Labour (Regulation and Abolition) Act, 1970. As per the averment made in the complaint, the accused is a contractor/principal employer as per the provisions of Section (2)-B-2(2)(g). That during visit of the complainant on 20-2-1996, it was found that the accused has not maintained records/register etc., in accordance with the provisions of Section 29 (1) and (2) of the Contract Labour (Regulation and Abolition) Act, 1970. It is also alleged that by not abolishing contract system in security work in accordance with the Notification No.GJ/95/203/CLA-1098-2813-M(3) dated 7-12-1995 issued by the Labour and Employment Department, Sachivalaya, Gandhinagar, the accused had committed breach of Section 10 (1) of the Act. It is alleged in the complaint that the accused has committed offence under Section 23 and 24 of the Contract Labour (Regulation and Abolition) Act, 1970. Learned Magistrate issued process below the said complaint. Against that order of the learned Magistrate, the applicants have approached this Court under Section 482 of the Criminal Procedure Code for quashing the said complaint and process issued below that complaint.

So far as applicant No.1 is concerned, it is a company while applicant No.2 is the Chairman of applicant No.1. Application No.3 and applicant No.4 are Vice-President and Senior General Manager of applicant No.1-company.

Mr.K.M.Patel, learned advocate for the applicants

submitted that he is not pressing this application so far as applicant No.1 company and applicant No.4 – Shri Mahendrabhai Charotaria, who is Senior General Manager of the company are concerned. Mr.Patel submitted that aforesaid applicants would like to take all available defence in pending trial. Therefore, this application is not entertained so far as applicant Nos.1 and 4 are concerned and liberty is granted to them to raise all available points in pending trial. Accordingly, this application is confined only qua applicants No.2 and 3.

Mr.Patel, learned advocate for the applicants submitted that the applicants No.2 and 3 have not committed any offence under Section 10 (1) of the Act and that Section itself does not prohibit contract labour system. It is submitted by Mr.Patel that applicants No.2 and 3 do not even attend the day-to-day affairs of the company at Bharuch. He further submitted that there is no positive averment in the complaint that offence has been committed with knowledge of applicants No.2 and 3. He also submitted that applicant No.2 is having his office at Mumbai and he would not be knowing about the day-to-day affairs of the factory at Bharuch. Accordingly, applicant No.3 is also an officer at Mumbai and he is not even taking part in day-to-day affairs of the factory at Bharuch.

In support of his contentions, Mr.Patel has relied upon the following judgements of the Supreme Court.

1) (2005) 1 SCC 122
Zandu Pharmaceutical Works Ltd. And others Vs. Mohd. Sharaful Haque and Another.

2) AIR 2001 SC 2960
S.N.Palanitkar and Others Vs. State of Bihar and Another.

3) AIR 1992 SC 2206
K.M.Mathew Vs. State of Kerala and Another.

On the other hand, learned APP, Mr.Kogej submitted that it is true that no direct averment or allegation is made against applicant Nos.2 and 3 in the complaint. He submitted that he is making this statement after taking instructions from Mr.M.M.Vasava, Government Labour Officer, Bharuch. He therefore submitted that by retaining the complaint against applicant No.1 and 4, complaint can be quashed against applicant Nos.2 and 3, however, liberty may be given to implicate applicant Nos.2 and 3 again during trial, in case some evidence is available against them.

Considering the aforesaid aspect of the matter and considering the fact that there is no averment in the complaint against applicant Nos.2 and 3 that they were responsible for the aforesaid offence, as well as in view of the stand taken by learned APP, after taking instructions from the complainant, this application is allowed qua applicant Nos.2 and 3. Complaint being Criminal Case No.11681/1996 pending in the Court of learned Chief Judicial Magistrate, Bharuch and process issued thereon is quashed so far as applicant Nos.2 and 3 are concerned.

It is clarified that the complaint may proceed against applicant Nos.1 and 4. It is further clarified that during trial if any evidence is available or found against applicant Nos.2 and

3, it will be open for the complainant to request the trial Court to implead applicant Nos.2 and 3 as accused as per the provisions of Section 319 of the Criminal Procedure Code.

Accordingly, this application is allowed qua application Nos.2 and 3 only subject to the liberty as indicated herein above. Rule is made absolute to the aforesaid extent.

(P.B.MAJMUDAR, J.)

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